IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ANN WILLIAMS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 99-039-SLR
	)	
KENNETH S. APFEL, Commissioner of Social Security,	)	
	)	
Defendant.	)	

O R D E R

At Wilmington this 30th day of March, 2001, having reviewed defendant's motion to alter or amend judgment pursuant to Fed. R. Civ. P. 52(b) and 59(e);

IT IS ORDERED that said motion (D.I. 25) is granted for the reasons that follow:

1. Motions submitted pursuant to Fed. R. Civ. P. 52(b) and 59 are matters for the district court's discretion. Generally, the purpose of such motions "is to correct manifest errors of law or fact or, in some limited situations, to present newly discovered evidence." Haberern v. Kaupp Vascular Surgeons Ltd. Defined Benefit Plan and Trust Agreement, 151 F.R.D. 49, 51 (E.D. Pa. 1993); 11 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, § 2804 (2d ed. 1995). It is not an appropriate use of judicial resources for a party essentially

to request the court "to completely rewrite its findings and reverse its judgment." Id.

2. The ALJ, in his findings at bar, concluded that plaintiff "has severe subaverage intellectual functioning and alcohol abuse, but that she does not have an impairment or combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4." (D.I. 11 at 21)

3. The term "mental retardation" is defined in 20 C.F.R. pt 404, Subpt. P, App. 1, § 12.05 as "significantly subaverage general intellectual functioning **with deficits in adaptive behavior initially manifested during the developmental period (before age 22)**." (Emphasis added) The ALJ concluded that plaintiff failed to adduce evidence sufficient to demonstrate deficits in adaptive behavior, either before or after age 22. More specifically, the ALJ found no evidence at all concerning plaintiff's behavior prior to age 22. With respect to plaintiff's behavior after age 22, the ALJ found that, when plaintiff took the WAIS IQ test, the administering physician

> noted that her dress was appropriate, she appeared to be well cared for, her receptive and expressive language skills were adequate and she was able to follow directions and answer questions. Dr. Kurz found her cooperative. There were no signs of any gross or fine motor deficits. She was oriented times three and there were no signs in claimant of any thought disorders.

(D.I. 11 at 18) The ALJ also noted plaintiff's school and employment records. (D.I. 11 at 15, 19)

4. In connection with these findings, this court framed the relevant inquiry as follows: "The conditions imposed by 20 C.F.R. pt 404, Subpt. P, app. 1, § 12.05 require that (1) [plaintiff's] mental deficit exhibit itself prior to [her] 22nd birthday, and (2) the mental deficit must be accompanied by additional work-related limitations of function." (D.I. 21 at 25)

5. With respect to the first prong of the inquiry so framed, the court focused on the onset age and noted that some courts other than the Third Circuit have imposed on defendant a presumption that mental deficits such as those exhibited by plaintiff manifested themselves in the developmental period. See, e.g., Luckey v. Department of Health & Human Services, 890 F.2d 666, 668-69 (4th Cir. 1989); Sird v. Chater, 105 F.3d 401, 402 & n.4 (8th Cir. 1997); Guzman v. Bowen, 801 F.2d 273, 275 (7th Cir. 1986).

6. The court, however, did not specifically address the Third Circuit's opinion in Williams v. Sullivan, 970 F.2d 1178 (3d Cir. 1992), where the Third Circuit required a claimant to produce evidence sufficient "to substantiate a mental impairment existing prior to age 22." Id. at 1184. Moreover, the Court in Williams noted that claimant's "mental retardation is further put into doubt by the fact that [claimant] did, in

fact, maintain a job for most of his adult life." Id. at 1185.

The Court concluded:

> Williams failed to meet his burden of proving that he was mentally retarded before age 22. He produced evidence of a significant mental impairment, but he did not demonstrate that its onset occurred during the developmental period identified in the listings. Had Dr. Dyer's evidence with respect to Williams' IQ been sufficient to show Williams was mentally retarded prior to age 22, the Secretary would have had to proffer evidence to counteract his claim of disability under the regulations. Dr. Dyer's evaluation was not sufficient to support Williams' claim of retardation prior to age 22, however, so Williams cannot be found disabled under step three of the sequential evaluation process.

Id. at 1186.

7. Based on this precedent, the court reverses its earlier decision and concludes that the ALJ's determination that plaintiff failed to adduce evidence sufficient to satisfy the first prong of § 12.05C is supported by substantial evidence.[1]

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[1]The court, however, continues to believe that plaintiff has adduced sufficient evidence to satisfy the second prong of § 12.05C. As noted in its memorandum opinion, the Third Circuit has not yet interpreted the second prong of § 12.05C. Of the courts that have, the Ninth Circuit in Fanning v. Bowen, 827 F.2d 631 (9th Cir. 1987), has done so under facts similar to those at issue. In Fanning, the claimant was deemed to have IQ scores that satisfied the first prong of § 12.05C. The determinative issue then, was whether Fanning suffered "from a physical or other mental impairment which imposes an additional and significant work-related limitation of function, in satisfaction of the second prong of section 12.05C." Id. at 633. The court stated that "[o]ther circuits have concluded that an impairment imposes a significant work-related limitation of function when its effect on a claimant's ability to perform basic work activities is more than slight or minimal." Id. In adopting

8. The question remains whether the ALJ's finding of nondisability is supported by substantial evidence; that is, whether the record demonstrates that plaintiff has the residual functional capacity to perform her past relevant work cleaning offices, as a restaurant cook, and as a hand presser.

9. In his findings, the ALJ concluded that,

> despite the claimant's impairment(s) which include subaverage general intellectual functioning and alcohol abuse, she remains able to lift 25 pounds routinely and 50 pounds maximum. Furthermore, she could stand or walk 6 hours at a time and sit 3 hours in an 8 hour workday time. She could do repetitive reaching, bending, stooping, crouching, or climbing. She could not work at unprotected heights or be exposed to hazardous machinery. She could not do very

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this standard, the Ninth Circuit concluded that the ALJ had erred in not considering whether Fanning's personality disorder, knee injury and occasional blackouts, singly or in combination, had more than a slight or minimal effect upon Fanning's ability to perform basic work activities.

Defendant is correct in noting that the court in Nieves v. Secretary of Health and Human Services, 775 F.2d 12, 14 (1st Cir. 1985), held that where a claimant's impairment is found to be severe under the second of the five-step analysis, it automatically satisfies the significant limitations standard of § 12.05C's second prong. See also Cook v. Bowen, 797 F.2d 687, 690-91 (8th Cir. 1986); Edwards v. Heckler, 736 F.2d 625, 630-31 (11th Cir. 1984). The court does not believe this common sense holding implies that the reverse is likewise a correct proposition, that is, that a condition that is not deemed severe enough to satisfy the second step automatically fails to qualify as a secondary impairment under the second prong of § 12.05C. The ALJ applied the wrong legal standard to this question.

> complex technical work, but is able to do simple, routine, and repetitive work not requiring constant close attention to detail or use of independent judgment. She does need occasional supervision. This residual functional capacity is consistent with her past relevant work as a cook, presser or office cleaner. Claimant stated that as a cook she had to lift up to 25 pounds and had to walk and stand most of an 8 hour workday. Her past relevant work as described by claimant was simple and repetitive, a type of activity which I find claimant can sustain (Exhibit 9, 10 and/or testimony).

(D.I. 11 at 20) This conclusion is based on two RFC assessments conducted in 1994 (D.I. 11, ex. 13), Dr. Labowitz's physical findings (D.I. 11, Ex. 25 at 237-240), and the ALJ's assessment of plaintiff's credibility.

10. The lack of medical evidence in this case is lamentable. Plaintiff apparently has no treating physician; therefore, the ALJ was left to review the findings of physicians who saw plaintiff on isolated occasions.[2] Dr. Labowitz, who at least conducted an examination of plaintiff before assessing her residual functional capacity, found no objective evidence of a disabling physical impairment, yet choose to credit plaintiff's history in limiting her ability to do work-related activities of a physical character.

11. Under the relevant standard of review (see D.I. 21 at 14-15), this court may not set aside the denial of a

[2]At least, these were the only medical records the court could decipher.

plaintiff's claim for benefits unless it is "unsupported by substantial evidence." 42 U.S.C. § 405(g); 5 U.S.C. § 706(2)(E) (1999). "[S]ubstantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. NLRB, 340 U.S. 474, 477 (1951).

12. In this case, the court cannot say that the ALJ's denial of plaintiff's disability claim is supported by substantial evidence. The court finds the medical evidence relied on by the ALJ to be of questionable value. The court is also uncomfortable with the fact that plaintiff's impairments, in combination, apparently have not been considered by any medical or vocational professional, just the ALJ.

13. Therefore, the decision of this court entering judgment in favor of plaintiff is vacated and the case remanded for further proceedings consistent with this decision.

United States District Judge